

United States Postal Service

§ 961.11

§ 961.7 Answer to Petition and Supplement to Petition.

If the employee's Petition states reasons to support the employee's position, within 15 days from notice of the Petition, the General Counsel shall file an Answer to the Petition, and attach all available relevant records and documents in support of the Postal Service's claim, and a list of witnesses the Postal Service intends to call if an oral hearing is granted. If the employee files a Supplement to the Petition, the General Counsel, within ten (10) calendar days from the filing of the Supplement with the Recorder must file any Supplemental Answer and records to support the position of the Postal Service.

§ 961.8 Hearing Official authority and responsibilities.

The Hearing Official shall provide a full and fair hearing. The proceedings must be expedited to ensure issuance of the final decision no later than 60 days after the filing of the employee's hearing Petition. The Hearing Official's authority includes, but is not limited to, the following:

- (a) Ruling on all offers, motions or requests by the parties;
- (b) Issuing any notices, orders or memoranda to the parties concerning the hearing proceedings;
- (c) Using telephone conferences with the parties to expedite the proceedings. A memorandum of a telephone conference will be transmitted to both parties;
- (d) Determining if an oral hearing should be held; and setting the place, date and time for the hearing or the taking of testimony by telephone conference;
- (e) Administering oaths or affirmations to witnesses, and conducting the hearing in a manner to maintain discipline and decorum while assuring that relevant, reliable and probative evidence is elicited on the issues in dispute, but irrelevant, immaterial or repetitious evidence is excluded;
- (f) Establishing the record in the case;
- (g) Issuing the final decision orally or in writing no later than sixty (60) days after the filing of the employee's hearing Petition. When an oral decision is

rendered, a written confirmation will thereafter be sent to the parties. The decision must include the determination of the amount and validity of the alleged debt and, where applicable, the repayment schedule. It should also include findings and reasons.

§ 961.9 Effect of Hearing Official's decision; motion for reconsideration.

The Hearing Official's decision shall be the final administrative determination on the employee's debt or repayment schedule. No reconsideration of the decision will be allowed unless a motion for reconsideration is filed by either party within 10 days from receipt of the decision and shows good reasons for reconsideration. Reconsideration will be allowed only in the discretion of the Hearing Official. A motion for reconsideration by the employee will not operate to stay the collection action authorized by the Hearing Official's decision.

§ 961.10 Waiver of employee rights.

The Hearing Official may determine the employee has waived his or her right to a hearing and the employee's pay shall be offset in accordance with the Postal Service's offset schedule, if the employee:

- (a) Files a Petition for hearing after the end of the 15-day period allowed by the Act for filing the Petition, and fails to demonstrate to the satisfaction of the Hearing Official good cause for the delay;
- (b) Has received notice to appear at an oral hearing but fails to do so without showing circumstances beyond the employee's control;
- (c) Fails to file required submissions or to comply with orders of the Hearing Official, and the failure makes it difficult or impossible to hold the hearing or to issue the decision within the statutory time;
- (d) Files a withdrawal of his or her Petition for a hearing with the Recorder.

§ 961.11 Ex parte communications.

Ex parte communications between a Hearing Official or his staff and a party shall not be made. This prohibition does not apply to procedural matters. A memorandum of any communication

between the Hearing Official and a party will be transmitted to both parties.

PART 962—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO THE PROGRAM FRAUD CIVIL REMEDIES ACT

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AUTHORITY: 31 U.S.C. Chapter 38; 39 U.S.C. 401.

SOURCE: 52 FR 12904, Apr. 20, 1987, unless otherwise noted.

§ 962.1 Purpose.

This part establishes the procedures governing the hearing and appeal rights of any person alleged to be liable for civil penalties and assessments under the Program Fraud Civil Remedies Act of 1986 (codified at 31 U.S.C. 3801–3812).

§ 962.2 Definitions.

(a) *Attorney* refers to an individual authorized to practice law in any of the

United States or the District of Columbia or a territory of the United States.

(b) *Complaint* refers to the administrative Complaint served by the Reviewing Official on a Respondent pursuant to § 273.8 of this title.

(c) *Initial Decision* refers to the written decision which the Presiding Officer is required by § 962.20 to render, and includes a revised initial decision issued following a remand.

(d) *Investigating Official* refers to the Inspector General of the United States Postal Service or any designee within the Office of the Inspector General.

(e) *Judicial Officer* refers to the Judicial Officer or Acting Judicial Officer of the United States Postal Service or for purposes other than specified in § 962.21 any designee within the Judicial Officer Department.

(f) *Party* refers to the Postal Service or the Respondent.

(g) *Person* refers to any individual, partnership, corporation, association, or private organization.

(h) *Postmaster General* refers to the Postmaster General of the United States or his designee.

(i) *Presiding Officer* refers to an Administrative Law Judge designated by the Judicial Officer to conduct a hearing authorized by 31 U.S.C. 3803.

(j) *Recorder* refers to the Recorder of the United States Postal Service, 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078.

(k) *Representative* refers to an attorney or other advocate.

(l) *Respondent* refers to any person alleged to be liable for a civil penalty or assessment under 31 U.S.C. 3802.

(m) *Reviewing Official* refers to the General Counsel of the Postal Service or any designee within the Law Department who serves in a position for which the rate of basic pay is not less than the minimum rate payable under section 5376 of title 5 of the United States Code.

[52 FR 12904, Apr. 20, 1987, as amended at 63 FR 66053, Dec. 1, 1998; 67 FR 62179, Oct. 4, 2002]

§ 962.3 Petition for hearing.

Within 30 days of receiving the Postal Service's Complaint, issued pursuant to § 273.8 of this title, alleging liability under 31 U.S.C. 3802, the Respondent